

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 133 of 1988
in
SPECIAL CIVIL APPLICATION NO 6084 of 1987
with
SPECIAL CIVIL APPLICATION No 6084 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

AMBALAL BHIKHABHAI SONI

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 133 of 1988
MRS KETTY A MEHTA for Appellants
GOVERNMENT PLEADER for Respondent No. 1
NOTICE SERVED for Respondent No. 2
MR RJ OZA for Respondent No. 4

2. Special Civil Application No 6084 of 1987
MRS KETTY A MEHTA for Appellants
M/S PATEL ADVOCATES for Respondent No. 1, 2, 3, 4

CORAM: MR. JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE A.K.TRIVEDI

Date of decision: 31/08/2000

ORAL JUDGEMENT(R.K.Abichandani,J.)

This Letters Patent Appeal is directed against the judgment and order dated 20th April, 1988 of the learned Single Judge rejecting the petition of the appellants in which they had challenged the legality and validity of the recovery of tribal allowance which was paid to them. According to the appellants/original petitioners, Ankleshwar was included in the tribal area for the purpose of such allowance under the Government Resolution dated 4th October, 1979 at Annexure "B" to the petition, and therefore, they were rightly given the tribal allowance.

2. The learned Single Judge held that the interpretation, which was placed on the relevant resolution by the Audit Department to the effect that Ankleshwar town which had a large industrial estate in the country cannot be said to be a tribal area, appears to be just and proper. The learned Judge observed that, it may be, that around Ankleshwar town, there may be a certain village where the population of tribals may be considerable but Ankleshwar town itself cannot thereby become a tribal area. It was observed that if a tribal pocket is assigned the name 'Ankleshwar', the town Ankleshwar does not get included therein. In the companion matter being Spl. Civil Application no.6084/1987, the learned Single Judge by order dated 22nd April, 1988 directed the petition to be listed with the Letters Patent Appeal and that is how that petition is also heard alongwith appeal. The petition raises identical questions in respect of the tribal allowance which according to the petitioners was payable under the resolution dated 4th October, 1979, and therefore, no recovery could be effected as was sought to be done by the Audit Department.

3. By the circular dated 15th April, 1978 which is at Annexure "A" of Spl.C.A no.1905/1988 from which the LPA arises fifteen different pockets with names of Talukas and Districts were identified as the tribal area.

4. The very first entry in the circular is of Ankleshwar which is described as a scheduled tribe pocket in Ankleshwar Taluka of Bharuch District. The idea behind identifying Ankleshwar as a schedule tribe pocket was to include that area as well as other areas which

were listed, under the tribal development scheme. Based on this identification made by the Government under its circular dated 15th April, 1978, the Finance Department of the Government issued the resolution dated 4th October, 1979, a copy of which is at Annexure "B" to the petition as per which it was directed that the tribal allowance at the same rates as were laid down in the orders cited in the preamble will be admissible only to the Government employees posted in the tribal Talukas/pockets mentioned in column no.2 of Annexures I and II appended to the resolution. The other conditions as laid down in the Government Resolutions issued from time to time in the matter were to remain unchanged. These orders came into effect from 1st December, 1978. Copies of this resolution were forwarded to all Departments, Collectorates, High Court, Accountant General, Pay and Accounts Officers and other bodies. It is, therefore, obvious that the said resolution was of a general application and it was intended to provide allowances to the Government employees who were posted in the tribal areas mentioned in its Annexures. It appears that even in the subsequent Government Resolution dealing with tribal allowance to Government employees issued by the Finance Department on 1st June, 1987, consequent upon the introduction of the Gujarat Civil Services (Revision of Pay)rules, 1987, Annexure II included at item no.1 "Ankleshwar", as the scheduled area. It is, therefore, clear that Ankleshwar was identified as a pocket for the purpose of extending the benefit to the employees posted there of the allowances sanctioned by the Government under the resolution dated 4th October, 1979. The attempt to give a different meaning to " Ankleshwar" by the learned Single Judge is not at all warranted either by the circular dated 15th April, 1978 by which it was notified as a pocket of the scheduled tribes area nor by the resolution dated 4th October, 1979 by which tribal allowances were provided for in respect of the employees posted in such tribal areas. One cannot incorporate any extraneous knowledge for the purpose of giving different meaning to the name of a town or a village, because, the limits of a town or a village are all officially notified matters. Ankleshwar is named as a pocket and it is described in the taluka of Ankleshwar which is in Bharuch District. Therefore, the government employees posted in Ankleshwar were entitled to get tribal allowance under the resolution in question. The industrial growth in Ankleshwar was not a factor on which the admissibility of tribal allowance depended under that resolution. Therefore, the tribal allowance was rightly paid to these employees who were posted at Ankleshwar which was declared as a pocket of the scheduled tribes area under

the circular in view of the resolution extending the benefit of tribal allowance to such employees. The audit objections which were taken were not at all warranted and such employees, so long as the benefit continued to remain operative under the resolution in question, were entitled to get the benefits whenever they were posted in the said tribal area. Recovery for any such period for which the employees posted at Ankleshwar were entitled to get the tribal allowance under the resolution in question was therefore not warranted.

5. The impugned order of the learned Single Judge , is therefore, set aside and the LPA no.133/1988 is allowed. The Spl. Civil Application no.6084/97 which raises similar points is also allowed and in both these petitions the impugned action of seeking to recover the tribal allowances which were already paid for the period during which they were payable under the said Government resolution is held to be unwarranted and it is directed that no such recovery for the period for which employees posted at Ankleshwar were entitled to get the allowances should be made and the tribal allowance as was payable under the said resolution should be paid to the employees eligible to receive the same for the period when they were posted at Ankleshwar. Rule is made absolute accordingly in both the petitions with no order as to costs.

(R.K.Abichandani,J.)

(A.K.Trivedi,J.)

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